
Nikolai Zyuskin v. Russian Federation

CCPR/C/102/D/1605/2007

Communication No. 1605/2007

15 March 2007 (initial submission)

19 July 2011 (adoption of views)

19 Feb. 2012 (follow-up report due)

Facts

Mr. Nikolai Zyuskin was arrested, prosecuted and sentenced to 16 years imprisonment on counts of premeditated murder under aggravated circumstances. He is currently serving his sentence in the Russian Federation. Mr. Zyuskin reports that whilst in custody he was forced by officers to wear a gas mask, with his hands handcuffed behind the chair, as well as a scarf over his head, which obstructed his vision, whilst he was beaten on his head, thighs and shins.

Mr. Zyuskin claims a violation of Art. 7, for the treatment received after his arrest. He adds that the State's failure to provide him with the information on the additional investigations supports this claim. Mr. Zyuskin also claims a violation of Art. 14 §1, alleging that he was denied the right to a fair trial, since the first instance court ignored his allegations with regard to the unlawful methods used at the pre-trial investigation, as well as inaccurate and untruthful trial transcripts. Furthermore, the first instance court disregarded the testimony of Mr. I. L., attesting that he had murdered Ms. N. B.; as well as the contradictory testimonies of the key witnesses. Moreover, Mr. Zyuskin claims a violation of Art. 14 §5 as his ability to appeal was hindered by the second instance court, due to its dismissal of the author's arguments with regards to the unlawful methods used during his pre-trial investigation, by simply referring to the decision of the first instance court. In addition, the Supreme Court failed to acknowledge Mr. Zyuskin's claims of the inaccuracy and untruthfulness of the trial transcripts obtained by the first instance court. Finally, Mr. Zyuskin claims further violations of Art. 14 §2, 3(e), but does not provide information in substantiation of these claims.

The State submitted a reply and refuted the author's allegations. The State maintains that the author's claims with regard to the contradiction in the evidence provided against him have been examined in the framework of the cassation proceedings. Furthermore, the State argues that the author had many opportunities to raise attention to the torture he was allegedly subjected to: also neither the author nor his counsel complained about the use of unlawful methods whilst familiarizing themselves with the case files.

To this end, the author provided a response disputing that the State did not contest the admissibility of Mr. Zyuskin case. The author rejected the State's argument that there were no medical documents with the author's name in the case files. The author reinstates the fact that these documents were issued by the District Medical Association.

Consideration of admissibility

Communication is admissible under **Art. 7**. However, the Committee finds that the author has failed to provide substantive information for the claims made under **Art. 14 §2**; as well as **Art. 14 §1, 5** and so finds these parts of the communication inadmissible.

Key words

- Torture
- Ill-treatment

Relevant Provisions

- Article 7

Violated Provisions

- Article 7 in conjunction with Article 2 §3

Consideration of merits

Article 7 in conjunction with Article 2 §3: The Committee addressed the lack of investigation conducted at the domestic level with regard to the author's claims about being tortured whilst in detention. The Committee noted that there were some debate, between the State and the author, as to exactly how the injuries were suffered. Secondly, the Committee referred to its past jurisprudence (No. 030/1978, [Bleier v. Uruguay](#), 1980), reinforcing the fact that the burden of proof does not only rest on the author. Furthermore, the Committee reminded the State that 'a State party is responsible for the security of any person in detention and, when an individual claims to have received injuries while in detention, it is incumbent on the State party to produce evidence refuting these allegations,' (No. 907/2000, [Siragev v. Uzbekistan](#), 2005). Finally, the Committee noted that the author had provided detailed accounts of the ill-treatment he was subjected to and did submit this information to the relevant authorities in writing. Therefore, the Committee 'recalls that complaints of ill-treatment must be investigated promptly and impartially by competent authorities' (No. 1605/2007, *Nikolai Zyuskin v. Russian Federation*, 2011) .

Conclusions

The Committee finds that there has been a violation of Art. 7 in conjunction with Art. 2 §3 of the Covenant.

The Committee recommended that the Russian Federation was under an obligation to provide the author with effective remedy. This includes providing full reparation and adequate compensation. As well as launching "an impartial, effective and thorough investigation of the author's claims falling under article 7, prosecution of any person(s) found to be responsible" (No. 1605/2007, *Nikolai Zyuskin v. Russian Federation*, 2011). The State should also prevent similar violations in the future, publish the Committee's views and submit information about the measures taken to give effect to the Committee's decision by **19 February 2012**.

To conclude, the Committee's main concern in this case lie in the fact that there was a lack of investigation into the allegations of torture brought forth by the author. The Committee stressed the importance of providing impartial and prompt investigation in allegations of torture. The Committee also confirmed that the burden of proof does not only rest on the author alone and the State must also produce evidence refuting such allegations.

Dissent/Concurrence

N/A